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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 In re TERRORIST ATTACKS ON
5 SEPTEMBER 11, 2001 (Federal
6 Insurance Plaintiffs v.
7 Islamic Republic of Iran,
8 et al.)

03 MDL 01570

9 -----x
10 New York, N.Y.
11 August 17, 2015
12 10:45 a.m.

13 Before:

14 HON. GEORGE B. DANIELS,

15 District Judge

16 APPEARANCES:

17 ROBERT FOOTE
18 TOM MELLON III
19 RICHARD D. HAILEY
20 STEPHEN A. CORR
21 TIMOTHY B. FLEMING
22 JERRY S. GOLDMAN
23 BRUCE STRONG
24 Attorneys for Plaintiffs
25

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(In open court)

THE DEPUTY CLERK: In re Terrorist Attacks on
September 11, 2001, 03 MDL 01570.

Will the parties please rise and make their
appearances.

MR. FOOTE: Robert Foote, your Honor, on behalf of the
plaintiffs.

THE COURT: Good morning.

MR. HAILEY: Richard Hailey on behalf of the
plaintiffs, your Honor.

THE COURT: Good morning.

MR. MELLON: Tom Mellon III on behalf of the
plaintiffs, your Honor.

THE COURT: Good morning.

MR. CORR: Stephen Corr on behalf of the plaintiffs.

THE COURT: Good morning.

MR. FLEMING: Good morning, your Honor. Timothy
Fleming on behalf of the plaintiffs.

THE COURT: Good morning.

I have the motion for default judgment against Iran
and other related entities.

Why don't we make an appropriate record. Who wants to
lead this discussion?

MR. FOOTE: With your permission, I will start.

THE COURT: Mr. Foote, why don't you lay out what you

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1 want to accomplish today.

2 MR. FOOTE: Thank you, Judge.

3 What we want to accomplish today is to get an order of
4 liability on behalf of 15 estates and 304 individuals.

5 This is similar to the case that you heard before that
6 was entitled Havlish.

7 If you would give me a moment, the reason I'm standing
8 here instead of Mr. Tom Mellon, Jr., who did this before you
9 last time, is he passed away. He was the leader of our team,
10 the instrument behind this. He started working on this right
11 after the terrorist event, and without his guidance and
12 perseverance through this, none of us would be here today. His
13 son is here, but I'm a poor replacement for him, your Honor,
14 but I will try to get us through this.

15 THE COURT: For the record, we're specifically talking
16 about, of the MDL cases within In re Terrorist attacks, the
17 Hoglan case?

18 MR. FOOTE: That's correct, your Honor.

19 I would note for the record that none of the
20 defendants are here, and we are going to proceed to convince
21 you, as we did before, your Honor, that Iran and its entities
22 were implicit and provided material support to the terrorists,
23 and as a terrorist country, pursuant to statute, we have a
24 right to a judgment against them.

25 We understand we will follow up with Judge Maas after

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1 this, assuming your Honor finds, as he did in the other case,
2 liability.

3 There are three things we're going to do today, your
4 Honor. First, I'm going to give you some introductory
5 information. Second, Mr. Hailey, who you have known from
6 before, he is going to talk about the jurisdictional aspects
7 and the legal aspects, so that that is clear. Finally,
8 Mr. Fleming will be our third speaker. He is going to go
9 through in detail with you the proof.

10 All these claims, Judge, arise out of -- and this is
11 what you will hear today -- the material support that Iran and
12 its entities gave to Al Qaeda and the hijackers that resulted
13 in the worst terrorist attack on U.S. soil in history.

14 The proof, your Honor, is really three things: One,
15 we collected over the period of years the best experts that
16 were available in terms of terrorism and the relationship
17 between Iran and Al Qaeda and between Al Qaeda and what
18 happened on 9/11, to show the complicity that Iran had in this.
19 We have slides.

20 Basically, these are the defendants, your Honor. You
21 have seen these before. There is no change from the original
22 defendants. These are all instrumentalities of the terrorist
23 state. Again, I note for the record, they have been and still
24 are a terrorist state pursuant to order of the President of the
25 United States.

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1 THE COURT: These are collectively referred to here as
2 the Sovereign Defendants?

3 MR. FOOTE: Correct, your Honor.

4 Our experts vary from people who actually worked on
5 the 9/11 Commission, people who are experts in Iran itself, the
6 people who worked for the CIA, people that worked for INTERPOL,
7 people who have written about this extensively.

8 You will see in your Powerpoint, your Honor, that I
9 provided a little bit of background on each of these gentlemen.

10 Basically, Judge, you will see as you go through that
11 -- I'm not going to go through each of these -- this is a very,
12 very well thought-out team of experts, and a team of experts
13 who did a lot of work not only on the 9/11 Commission Report
14 but throughout their lives in terms of the relationships in the
15 Middle East and the fact that Iran has acted as a terrorist
16 state for many, many decades. Most of these names will be
17 familiar to you because you have heard this proof before.
18 We're going to go through it again for your Honor, so it is
19 fresh in your mind.

20 THE COURT: Is there an expert on this list?

21 MR. FOOTE: Yes. Every one of those on the first
22 slide, they are all experts, they are all affidavits before you
23 that Mr. Fleming will be talking about.

24 THE COURT: Which one of these experts, if any, were
25 not before me in Havlish?

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1 MR. FOOTE: All of them were before you in Havlish,
2 your Honor.

3 The sum and substance, as we go through these -- and
4 Mr. Fleming will talk about them in more detail -- the sum and
5 substance of this is you will be shown the relationship between
6 Iran and Al Qaeda and Osama bin Laden and how that relationship
7 was one of the material things that ended up with the terrorist
8 attack in New York. You will be shown the explosives training
9 that really relates to how they were able to train the
10 terrorists in Iran. You will be shown how travel is incredibly
11 important in this terrorist organization and that travel
12 facilitation was one of the main things that Iran did through
13 the government itself and the entities that are defendants.
14 You will be shown that there was a safe haven provided to the
15 eventual hijackers and others that worked behind the scenes to
16 make sure that this complicated attack occurred, and you will
17 be shown part of what was done is clean passports. The
18 importance of clean passports you may remember from last time
19 but you're going to hear it again. Part of the proof are these
20 experts. You will hear, again, largely from Mr. Fleming on
21 that, as he has worked basically nonstop on this for the last
22 decade to prepare this proof for your Honor. There are also
23 some government documents. After going through thousands and
24 thousands of government documents, we gleaned those that we
25 thought would be important to your Honor in determining that

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1 there was material support.

2 Finally, there is the testimony of insiders. As you
3 remember, we gave them initials, Witness X, Y, and Z, to
4 protect their own lives. That is the sealed testimony that
5 basically only your Honor has. And we also have testimony from
6 the ex-president of Iran.

7 That's the outline of what we're going to do today,
8 and at the end, your Honor, we're going to ask that you enter a
9 judgment of liability and a date for us to go see Judge Maas
10 about the damages in this case, but we're not here for damages
11 today.

12 With that, I would turn it over to Mr. Hailey to talk
13 to you about the law, your Honor.

14 THE COURT: Okay. Mr. Hailey.

15 MR. HAILEY: A couple of preliminary remarks, your
16 Honor.

17 On service, as the Court pointed out in the Havlish
18 case, service has to be well documented and made of record.
19 Service of our complaint and amended complaint was originally
20 filed on September the 9th of 2011. Our complaint was amended
21 on September 13th.

22 This Court gains jurisdiction over this matter on
23 October the 17th, with a conditional transfer under the MDL
24 provisions. The case, then, is properly before this Court.

25 On July the 2nd, we were permitted to amend our

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1 complaint by the Court. It was mainly a housekeeping event.
2 We added some parties that we subsequently removed.

3 On October the 18th of 2012, we then applied for a
4 license from the Treasury Department, from OFAC, in order to
5 ship packages and perfect service by international courier DHL
6 express to Iran.

7 We then packaged them, under the rules, under Foreign
8 Sovereign Immunities Act, 1608(a)(3) and 1608(b)(3)(B). We
9 then presented 16 sets of the documents to the Clerk of the
10 Court for the Southern District of New York for packaging and
11 delivering. Those were, in fact, delivered and shipped by the
12 Clerk on July the 30th of 2013. DHL tracking summaries
13 indicated that those packages reached Tehran on August the 4th
14 of 2013. Those shipments were refused by the Ministry of
15 Foreign Affairs on the same date, and those were returned to
16 this Clerk of the Court in this district on August the 17th of
17 2013.

18 The service provisions of the Foreign Sovereign
19 Immunities Act allow for several ways to perfect service upon
20 refusal. We spare explanation except for the one that we used,
21 the method that we did use, which is the diplomatic method.
22 These documents were served upon the State Department. The
23 filing fees of \$2,275 was paid. And the State Department, in
24 fact, received from the Clerk of this Court on December 13th of
25 2013, the service packages. Those were forwarded, on

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1 February the 16th, to the Foreign Interests Section of the
2 Embassy of Switzerland in Iran and served upon the Iranian
3 Minister of Foreign Affairs for the eight Iranian defendants
4 and their instrumentalities. Service was then perfected under
5 the diplomatic provisions of the Foreign Sovereign Immunities
6 Act.

7 And the key date is February 16, 2014, is when it was
8 verified, that service was perfected. To date, none of the
9 defendants have entered an appearance. And therefore, 60 days
10 was their time frame to do so under 1608(d), and they have not
11 done so.

12 Procedurally, pursuant to Rule 55 and Local Civil Rule
13 55.1, we applied for and received a certificate of default from
14 the Clerk's Office on March the 17th of 2015, more than a year
15 after the formal service process was completed.

16 THE COURT: Let me interrupt you for a second. Would
17 you state more specifically on the record what was this service
18 package?

19 MR. HAILEY: The service package contained translated
20 copies of the complaint, an ample supply; the seal of this
21 court; the transmission letter, a transmission document from
22 the Clerk of the Southern District; and there were 16 copies
23 translated into Farsi that were delivered.

24 THE COURT: That was the second amended complaint?

25 MR. HAILEY: Yes, sir.

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1 And summons. I'm sorry, your Honor. And proper
2 summons.

3 On March the 17th of 2015, the process was completed,
4 and a certificate of default was entered by the clerk, and it
5 is upon that certificate that we appear before you today.

6 With relationship to the law of this case, it will
7 involve both the Foreign Sovereign Immunities Act and the Alien
8 Tort Claims Act/Torture Victims Protection Act of 1991.
9 Because this case involves both U.S. and non-U.S. citizens,
10 therefore, the Alien Tort Claims Act will be applicable to
11 these claims.

12 Our requirement at this stage, having satisfied the
13 procedural prerequisites, is to present this Court with what
14 the statute states as proof convincing to the court that the
15 court can rely on that, in fact, there occurred an arrangement
16 and a fact situation upon which to base the material support
17 allegation that we make.

18 We believe that this case will involve both plaintiffs
19 of U.S. nationals and non-nationals under the Foreign Sovereign
20 Immunities Act. I speak specifically now about the U.S.
21 nationals. The case of Owens v. Republic of Sudan, we believe,
22 is most instructive, and it gives some guidance to this Court;
23 and of course, this Court's own finding in Havlish basically
24 gives guidance upon our facts as we will present them.

25 We believe that material support is being defined as

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1 support in transportation, support in education, and support in
2 housing, safekeeping. The statute is quite broad, and we will
3 present specifics by way of expert testimony and deposition
4 sworn testimony and documents that support the finding of
5 material support herein.

6 We are asking that you also apply the Alien Tort
7 Claims Act, the Torture Victims Protection Act of 1991. Here
8 we have satisfied the prerequisites. Again, Iran has a
9 certificate of default entered. It is designated as a sponsor
10 of terrorism since 1984, the first year that the list existed.
11 Iran supplied, we will prove, material support. Some of the
12 plaintiffs are not U.S. nationals; and therefore, this
13 particular act must be used with regards to them.

14 The Congress expanded the Alien Tort Act to cover
15 specifically where one acts under color of law, of any foreign
16 nation, and includes, among other things, as a violation the
17 extra judicial killing of individuals. All of our individuals
18 are claiming through decedents. So we meet the definition. We
19 believe that the Royal Dutch Petrol case and the Filartiga case
20 are both instructive in this matter, but here Havlish does not
21 have application because it wasn't proceeded under the Tort
22 Claims Act. Those were U.S. citizens.

23 The service that I mentioned, it is of note, we did
24 receive our letter back from the State Department through the
25 diplomatic method of service, and it was sent to the State

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1 Department on the 13th of December of 2013, and it was served
2 on February 16th of 2014. And all eight Iranian defendants and
3 Iran and the subdivision and instrumentalities were served.

4 MR. FOOTE: Thank you, Rich.

5 Next, Judge, you will hear from Mr. Fleming, which
6 will be the longest of the presentations.

7 I wanted to start it out by looking back at the 9/11
8 Commission Report. As you heard last time, there was a
9 deadline for the 9/11 Commission, and when they finished their
10 report, they say, I think at page 241, "We believe this topic"
11 -- meaning Iran -- "requires further investigation by the U.S.
12 Government."

13 It is the Tom Mellon team that followed that trail
14 left at the end of the 9/11 Commission Report, and Mr. Fleming
15 will now give you the trail that the Tom Mellon team found.

16 THE COURT: Mr. Fleming.

17 MR. FLEMING: Good morning again, your Honor.

18 THE COURT: Good morning.

19 MR. FLEMING: I would like to start, first, your
20 Honor, by making a few representations to the Court as an
21 officer of the court regarding the proof that we are
22 presenting. I state, as an officer of the court, your Honor,
23 that I am a part of the legal team that was assembled by Tom
24 Mellon that gathered all of the evidence that was admitted into
25 evidence in the Havlish, et al., versus bin Laden, et al. case,

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1 which your Honor decided in 2011.

2 I personally reviewed and analyzed all of that
3 gathered evidence and prepared the evidentiary presentation to
4 the Court in Havlish, as well as what will be done here today,
5 presented most of that evidence, along with Mr. Mellon, to the
6 court in Havlish, and I'm doing so again here today. I
7 personally, and as part of the legal team, interviewed all of
8 the expert witnesses and submitted the expert affidavits to the
9 Court.

10 I'm personally aware of the execution of all of the
11 submitted affidavits either by being present for the execution
12 or by having such execution confirmed to me verbally or in
13 writing.

14 I took the sworn video testimony of Witnesses X, Y,
15 and Z. And I was present for the sworn video testimony of the
16 first president of Iran, Abolhassan Banisadr, which was taken
17 by my colleague here in the courtroom, Richard Hailey, who you
18 just heard from.

19 I personally gathered, reviewed the information for,
20 and wrote and submitted my own sealed affidavits to the Court
21 regarding the evidence that was submitted to the Court under
22 seal in the Havlish case. The relationship of both of the
23 Havlish and Hoglan complaints to the evidence that we are using
24 in these cases is identical, and I can personally attest that
25 because I was a substantial and constant part of the

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1 evidence-gathering team. I was also present for each and every
2 meeting with all of the witnesses who testified, both their
3 actual testimony and any prior information or debriefing that
4 we obtained from those witnesses and every other witness who
5 provided any information for our presentation.

6 I can represent as an officer of the Court that all of
7 the information and all of the evidence that we are submitting
8 is relevant and probative to the Hoglan plaintiffs' claims
9 against all the Iranian defendants and that I personally
10 reviewed all of the sealed and unsealed evidence in this case
11 that we're presenting to your Honor today.

12 Therefore, upon those grounds, I would move to admit
13 all of the sealed and unsealed evidence that was previously
14 admitted into evidence in the Havlish case, I would move that
15 evidence to be admitted in the Hoglan case.

16 THE COURT: That motion is granted.

17 MR. FLEMING: Further, I move to admit into evidence
18 one additional exhibit, which I have here on paper, and that is
19 the State Department Country Reports on Terrorism, excerpts
20 related to The Islamic Republic of Iran as a state sponsor of
21 terror. We submitted all of those from 1980 through the date
22 of the Havlish hearing. That is Exhibit 13 in Havlish. We
23 wanted to update that with the Country Reports from the State
24 Department that have been published in the time since the
25 Havlish hearing, and that would be for the years 2010 through

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1 2014. We can certainly file those by electronic submission,
2 but I do have paper copies of those excerpts here today. So I
3 would move those into evidence just to show that nothing has
4 changed, despite anything that has happened diplomatically in
5 our world, absolutely nothing has changed with respect to our
6 government's designation of Iran as a state sponsor of terror,
7 as the most active state sponsor of terror on the planet.

8 THE COURT: Do you have those designated as a
9 particular exhibit?

10 MR. FLEMING: I don't, your Honor. We could either
11 put them in as Exhibit 38, or we can do it as 13A because they
12 are a continuation of Exhibit 13. I did not label them for
13 that reason.

14 THE COURT: We will stick with 13A, and you can file
15 those electronically.

16 MR. FLEMING: Very well.

17 Also, your Honor, because the sealed evidence in the
18 Havlish case resides in the vault of this Court and is labeled
19 "Havlish," I would move that we refile or that we file again
20 the sealed evidence on CD ROM or DVD, which would be the
21 testimony of the three witnesses, the sealed testimony, and the
22 affidavits, the sealed affidavits, which pertain mostly to that
23 testimony and to a few other matters and that we do so under
24 seal in Hoglan so that we ensure that we have a full record
25 pertaining to Hoglan and it is labeled as such.

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1 THE COURT: That's fine.

2 MR. FLEMING: We will do that in a few days.

3 In addition to that, I would move to submit one or
4 perhaps two additional affidavits to be filed under seal, which
5 pertain to the sealed evidence itself and to the ongoing
6 security situation regarding the witnesses to which I have
7 alluded several times in the past and I think the Court is
8 aware of through our sealed submissions. There have been a few
9 developments in the past three years which I think it would be
10 important for the Court to be aware of, and I could do that
11 within a short period of time. If your Honor would be disposed
12 to receive that, I would also like to make an arrangement to
13 hand-deliver a copy for your Honor through either your clerk or
14 courtroom deputy or whomever you should so designate.

15 THE COURT: These are new affidavits that have yet to
16 be submitted?

17 MR. FLEMING: These would be new. They would be
18 brief. They don't change anything that has previously been
19 submitted. They are just some updates on a few points.

20 THE COURT: All right. They will be designated as
21 what?

22 MR. FLEMING: They would be designated as sealed
23 exhibits, we can say A and B for the Hoglan case. I don't
24 remember the last number for the Havlish case. I think it was
25 S46, but I'm not a hundred percent sure.

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1 THE COURT: They're attorney affidavits or witness
2 affidavits?

3 MR. FLEMING: There would be a third party, and the
4 other, if it is necessary, would be mine.

5 THE COURT: Is there some way we can designate the
6 third party consistent with a previous designation of that
7 third party?

8 MR. FLEMING: There's two ways I could do this.
9 There's two different people who could attest to it. One would
10 be somebody who has already submitted an affidavit. The other
11 would be someone whose name is in the sealed record of the
12 case.

13 THE COURT: They're not designated X, Y, or Z?

14 MR. FLEMING: One of them could be X. There might be
15 another one, as well.

16 THE COURT: Okay.

17 MR. FLEMING: I will choose a letter, and it could
18 be S.

19 THE COURT: All right. If it is being submitted by
20 someone who submitted an earlier affidavit in Havlish, if we
21 could use the same designation.

22 MR. FLEMING: Yes. If that's true, then we would use
23 the X, Y, or Z designation. If it is the other person, I would
24 choose another letter.

25 THE COURT: All right.

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1 MR. FLEMING: We probably should file a motion for
2 your Honor to sign in that regard, or does this suffice?

3 THE COURT: No. What is your application at this
4 point with regard to that?

5 MR. FLEMING: The application is to simply file one or
6 two additional affidavits; one would be mine and one would be
7 the other person.

8 THE COURT: I will grant that motion --

9 MR. FLEMING: Under seal.

10 THE COURT: -- on this record.

11 Is there any other indication of the nature of the
12 affidavits, by whom they're being submitted, that you want to
13 put on the record?

14 MR. FLEMING: Not in open court, your Honor.

15 THE COURT: All right.

16 MR. FLEMING: Then, finally, I just wanted to mention
17 that your Honor had issued a standing order in Havlish that if
18 and when we were able to unseal any portion of the sealed
19 evidence that you would grant that at any time. The situation
20 has not really changed. It's the status quo. We do hope at
21 some point to be able to unseal some of the evidence. I am
22 going to refer to the testimony of Witness X freely today, and
23 it is that testimony which most likely has been sealed, but
24 there are still some ongoing security situations that counsel
25 against that at this time. I would say the status quo remains

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1 as to unsealing, but we would like to perhaps unseal some of
2 that evidence at a future time.

3 I will begin, your Honor, with a very brief recap of
4 Iran's terrorist history.

5 The Islamic Republic of Iran, as very amply discussed
6 in our expert affidavits in this case, Iran is engaged in and
7 has supported terrorism as an instrument of foreign policy ever
8 since the inception of The Islamic Republic after the Islamic
9 Revolution in 1979. Furthermore, Iran has been waging
10 virtually an undeclared war against both the United States and
11 Israel for 30 years.

12 As I go through here, I'm going to refer to some of
13 the experts who have discussed these very points. I won't be
14 exhaustive in that regard. Most of these are in our briefs.
15 If there is anything the Court desires, we would be happy to
16 supply it. Everything I am saying about the history is
17 discussed in the affidavits principally of Dr. Ronen Bergman,
18 Dr. Patrick Clawson, Dr. Bruce Tefft, and Claire Lopez in their
19 combined affidavit, Mr. Kenneth Timmerman, and the 9/11
20 Commission witnesses, as well, and, finally, in the writings of
21 Robert Baer, an imminent expert on Iran whose materials have
22 been placed before the Court under circumstances the Court may
23 recall from the sealed information in the Havlish case.

24 In waging this undeclared war against the United
25 States and Israel, Iran has principally used asymmetrical or

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1 unconventional strategies and terrorism. It acts almost
2 entirely through proxies, such as Hezbollah, Hamas, al Qaeda,
3 the Palestinian Front Liberation of Palestine General Command,
4 and others.

5 As Mr. Foote mentioned, the U.S. State Department has
6 designated Iran as a foreign state sponsor of terror every year
7 since 1984, and this continues to the present.

8 Dr. Ronen Bergman is one of the world's greatest
9 experts on Iranian terrorism. He is an award-winning
10 investigative journalist from Israel. His affidavit shows that
11 Iran was involved 133 terrorist operations in the nine years
12 between 1987 and 1995 alone and many others involving hundreds
13 of fatalities before and after. He also discusses how
14 Hezbollah, which is Iran's own creation and its principal
15 terrorist proxy, it was an Iranian organization from its
16 inception. It is funded, directed and controlled by the
17 government of Iran, actually the state of Iran, principally the
18 Supreme Leader. Imad Fayeze Mughniyah was its military leader,
19 its chief terrorist operative for 20-some years before his
20 death in 2008. And we will have more to say about
21 Mr. Mughniyah in a little bit.

22 One of the defendants in this case is the Ayatollah
23 Ali Hoseini Khamenei. He is the Supreme Leader of Iran and
24 certainly the most important and powerful official in Iran. He
25 is only the second Supreme Leader Iran has ever had, and he is

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1 the Supreme Leader in every sense of the word. He can make or
2 overrule any decision made by the government. He can dismiss
3 the parliament. He appoints the officeholders of almost every
4 powerful position in Iran, and his term of office is unlimited.
5 His role and how Khamenei in particular has used his powers is
6 discussed by Dr. Clawson, Dr. Tefft and Ms. Lopez,
7 Mr. Timmerman, prominent in the writings of Mr. Baer, and also
8 extensively in the testimony of Witnesses X, Y, and Z.

9 Another individual defendant in this case is Ali Akbar
10 Hashemi Rafsanjani, the former president from 1989 to 1997 and
11 the former speaker of the parliament in the '80s. He is also
12 one of the wealthiest individuals in all of the Middle East.
13 He was certainly the second most powerful figure in the Iranian
14 government at the time of the 9/11 attacks and for a much
15 longer period, basically from 1989 until at least 2005, and he
16 still holds very powerful positions in Iran. He is discussed
17 also by the same experts, as well as the testimony of
18 Witness X, who knew him very well.

19 Both Khamenei and Rafsanjani have long records of
20 direct involvement in Iran's material support for terrorism.
21 They are key figures in several court cases in the United
22 States and in the so-called Mykonos case in Germany, which
23 involved the assassination of five Kurdish leaders who were in
24 a Greek restaurant in Berlin. They were assassinated by agents
25 of their regime. The terrorists were apprehended and

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1 prosecuted and convicted. Testifying in the Mykonos case were
2 two of our witnesses. Former President Abolhassan Banisadr
3 testified in the Mykonos case, as well as Witness X, who I will
4 say right now and will say throughout is Abolghassem Mesbahi, a
5 very prominent member of the Iranian Intelligence Services
6 until his defection to the West in 1995.

7 Banisadr endorsed and vouched for Mesbahi, whose
8 testimony in the Mykonos case was absolutely critical to the
9 conviction of the defendants, and he implicated directly both
10 the Supreme Leader and former-President Rafsanjani in the
11 decision to undertake the assassinations in the Mykonos case.

12 Another defendant in the case is the IRGC, the Islamic
13 Revolutionary Guard Corps, known in Iran as the Sepah Pasdaran.
14 This is a special kind of military, paramilitary, and terrorist
15 organization, as well as a business conglomerate that really
16 knows no parallel in the West. It is not controlled by the
17 president of Iran or is not accountable to the parliament. It
18 is accountable only to the Supreme Leader and to the Islamic
19 Revolution as a concept itself. It is the guardian and
20 striking arm of the Islamic Revolution, as it is described by
21 Dr. Patrick Clawson, and it is a major factor in the Iranian
22 economy, owning and controlling hundreds of businesses and
23 entire industries. When the new Ayatollah Khomeini Airport was
24 opened in Tehran, the day before the IRGC rolled up in tanks
25 and simply took it over because it can, and it holds it to this

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1 day. The IRGC is discussed in detail by Mr. Clawson, by Dr.
2 Bergman, by Mr. Timmerman, by Lopez and Tefft, by Robert Baer,
3 and in the testimony of Witnesses X, Y, and Z. Witness Y was a
4 member of the IRGC.

5 The Qods Force is a special division of the IRGC,
6 which is its overseas or international terrorist arm. It has a
7 long history of engaging in coups, insurgencies,
8 assassinations, kidnappings, bombings, and arms dealing. It is
9 one of the most organized, disciplined, and violent terrorist
10 organizations in the world. It has been designated by the U.S.
11 Treasury Department as a terrorist organization providing
12 material support to the Taliban and other terrorist
13 organizations. The same experts discuss the Qods Force that I
14 just named regarding the IRGC.

15 Another defendant is the MOIS, The Ministry of
16 Information and Security. This is, basically, Iran's version
17 of the CIA. It is one of the best funded, most skilled, most
18 feared intelligence agencies in the world, certainly in the
19 Middle East. Like the IRGC, it has a very long history in
20 terrorism, assassinations, kidnappings, and other crimes. All
21 three of the defector witnesses, X, Y, and Z, were agents of
22 the MOIS. And they testify extensively about the MOIS. Many
23 of the State Department Global Reports on Terrorism for the
24 past 25 or 30 years, actually, refer to MOIS as Iran's key
25 facilitator and director of the terrorist attacks.

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1 But after a series of events in Iran known as the
2 "Chain Murders" from 1988 to roughly 1998 -- the "Chain
3 Murders" were a series of murders of dissidents, writers,
4 newspaper people, even poets -- and they were discovered, and
5 some of the dealings of MOIS and certainly their involvement
6 was revealed, and there was a great public outcry about the
7 "Chain Murders." This led to some reforms, but more
8 importantly, it led Ayatollah Khamenei, the Supreme Leader, to
9 form a special intelligence apparatus that has no name that
10 reported directly to him and worked under his direct control.
11 This had a predecessor, Ayatollah Khomeini had done the same
12 thing before MOIS was formed, and Khamenei reinvented that, and
13 it is significant for our case, as you will see in a few
14 minutes.

15 Both Witnesses X and Z testify to both MOIS but also
16 the Supreme Leader's special intelligence apparatus and its
17 conduct of acts of international terrorism. It is also
18 significant that the MOIS is described in particular by
19 Witness X. He described how the entire apparatus of the
20 Iranian state and government and many parts of its private
21 sector, including otherwise private companies, are at the
22 service of the Supreme Leader, the IRGC, and MOIS, to be called
23 into service to support terrorism. And Witness X has a great
24 deal of detail about that because he was a direct participant
25 in so using those arms of the government and private sectors.

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1 Another defendant is Hezbollah. Hezbollah, as I
2 mentioned, was a creature of Iran in the early to mid-1980s as
3 an extension of the Iranian Revolution into Lebanon. It is
4 well funded, well trained, and serves as a terrorist proxy
5 organization for Iran. The U.S. State Department designated
6 Hezbollah a foreign terrorist organization in 1997, and it
7 remains so today.

8 This is quite significant because, first, as
9 Dr. Clawson attests, it is the closest relationship of any
10 state to any terrorist organization ever, and Hezbollah is
11 frequently the most skilled and most often called upon
12 terrorist instrumentality at the disposal of the Supreme Leader
13 and MOIS and IRGC, and they are worldwide. Hezbollah has cells
14 probably on every continent, certainly throughout the Middle
15 East, Asia, South America, and probably the United States.

16 Now, one of the common misconceptions that you still
17 can read about very easily in today's publications, or see it
18 on TV and the news, is people referring to the divide between
19 Sunnis and Shia and discounting how they could possibly work
20 together. As Robert Baer said, nothing could be further from
21 the truth. Al Qaeda, which of course conducted the 9/11
22 operation itself on September 11, 2001, is a Sunni
23 organization; whereas, Iran is a Shia nation. So it raises the
24 question about, well, how Sunnis and Shias work together, is
25 that a likely thing? Contrary to the common misconception, all

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1 of our experts discuss in great detail how, in fact, they do
2 work together, particularly in matters of terrorism where it is
3 in their own interest to do so. Even the 9/11 Commission
4 Report found this to be the case, somewhat understating it by
5 saying the relationship between al Qaeda and Iran demonstrated
6 the Sunni-Shia division did not necessarily pose an
7 insurmountable barrier to cooperation in terrorist operations,
8 and then they, of course, have several pages about it and how
9 they did it together. Our experts, including Daniel Byman,
10 Lopez, Tefft, Timmerman, Clawson, all discuss at great length
11 how the Sunni-Shia divide was surmounted for purposes of
12 terrorism. Witnesses X, Y, and Z do the same thing. And
13 indeed, President Banisadr testified to that.

14 Both Iran and Al Qaeda can be ruthlessly pragmatic.
15 Iran, even though it is Shia, is willing to use, co-opt, and
16 support Suni proxies to carry out acts of terrorism. The
17 religious differences, to the extent that they exist, are
18 mainly at the sort of everyday person level, and it is a
19 historical hatred that has fomented in order to cause chaos on
20 the streets whenever they need it. But at the levels of power,
21 at the levels where terrorist actions are planned and decided
22 upon, the Sunni and Shia terrorist organizations very
23 frequently work together. And it is an excellent tactic from
24 Iran's standpoint because, frankly, it has much of the world
25 fooled as to whether or not Sunnis and Shias would work

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1 together. But the experts and the State Department and our own
2 investigative agencies know better.

3 As Mr. Banisadr testified, Iran's leaders don't
4 actually care very much about Islam. What they care about is
5 power. And as Mr. Baer has written, they care about territory,
6 control of populations, control of resources, and other
7 geopolitical factors. Terrorism is not really fueled nearly as
8 much by religion -- although it is a factor, to be sure, I'm
9 not saying it is not a factor -- but a key aspect of terrorist
10 decision-making is geopolitical, not religious. There is a
11 very well documented history to this, starting in the early
12 1990s, and I will get to that in a moment.

13 Dr. Daniel Byman lays out some of the reasons for this
14 cooperation, and that is that both the Sunnis and Shias, Iran
15 and Al Qaeda, for example, see the United States as its enemy,
16 and both believe that it is an imperialistic power.

17 Dr. Byman also lays out that Iranian Shia Islam
18 basically incorporates the Zoroastrianism precepts, the ancient
19 religion of Persia, more so than any other religion. That
20 precept is that there are really only two states of being:
21 Good and evil. It sees itself as good, and it sees the United
22 States and Israel as evil, and it looks at everything through
23 that dualistic world-view prism. Dr. Byman lays it out better
24 than I just did, but it is a very important point to realize
25 that the religion is certainly not a barrier to cooperation

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1 when it is viewed in a very simplistic light as that.

2 Now, historically, the bridging of the Sunni-Shia
3 divide began in 1991, when the Sudanese leader, Hassan
4 al Turabi, promoted the idea of casting aside this centuries
5 old debate about who the proper successor to Muhammad was,
6 which is the basic schism between Sunni and Shia. Al Turabi,
7 who is the principal cleric in the Sudan, said let's put that
8 aside for a century or so or however long it takes and focus on
9 our real enemy, which is the West, the United States,
10 principally, and Israel. He held the first popular Arab and
11 Islamic Congress in 1991, where he promoted this idea, and
12 invited terrorists and clerics from 45 countries. This was
13 attended by Iran. Importantly, as one of the by-products of
14 the 1991 Congress was a meeting that Hassan al Turabi arranged
15 in Khartoum, Sudan, between Osama bin Laden and Ayman
16 al Zawahiri and the Hezbollah terror chief, Imad Mughniyah, who
17 I referred to earlier, as well as Iran officials, including
18 IRGC Brigadier General Mohammad Baqr Zolqadr. They basically
19 forged an agreement to work together -- again, these are Sunni
20 and Shia organizations -- against the West.

21 Thereafter, they immediately began funneling al Qaeda
22 operatives and trainers to Iran and to Lebanon for training by
23 the IRGC and MOIS in Iran and by Hezbollah in Lebanon with
24 regard to terror tactics and, in particular, one of Hezbollah's
25 areas of expertise, that is explosives. This agreement at the

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1 1993 meeting in Khartoum, Sudan, led to an ongoing arrangement,
2 alliance, which involved training, joint operations, ongoing
3 communications between Iran and Al Qaeda with Imad Mughniyah as
4 the focal point, the major connection point, Imad Mughniyah,
5 the master terrorist of Hezbollah, as the go-between.

6 Interestingly, prior to the 1993 meeting in Khartoum,
7 Sudan, Osama bin Laden was really known as a "freedom fighter."
8 He was on the front lines of the war against the Soviet Union
9 in Afghanistan, which was more or less on the same side that we
10 were on. That all changed in 1993. Bin Laden was never any
11 fan of the United States, but he was not a terrorist yet. It
12 was Imad Mughniyah who was a very accomplished terrorist by
13 then. And I just point out that he was involved in all of the
14 planning and execution of the major terrorist events of the
15 1980s, which included a wave of assassinations, kidnappings,
16 which included the Lebanese hostage crisis of the 1980s, which
17 ultimately culminated in the Iran-Contra scandal. Imad
18 Mughniyah was at the center of that. He is the person who
19 personally tortured and killed the CIA station chief in Beirut,
20 William Buckley. He was a master terrorist, and the FBI and
21 the CIA and all experts in the United States agree on his
22 particular genius for terrorism, if you will. He is the one
23 who converted bin Laden to terrorism because Mughniyah showed
24 bin Laden and al Zawahiri that you can affect U.S. foreign
25 policy with spectacular simultaneous terrorist attacks that the

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1 world would see. There are several examples. Imad Mughniyah
2 was the one who organized and conducted through his operatives
3 the suicide bombings of the United States Embassy in Beirut in
4 1983. There were two of them. They bombed the embassy and
5 then the annex, truck-bombed the annex. Shortly thereafter,
6 the same year, Imad Mughniyah masterminded the simultaneous
7 truck bombings of the United States Marine Corps barracks
8 outside of the Beirut Airport, simultaneously attacking in the
9 same fashion the French paratroopers barracks. And in fact,
10 according to well-documented intelligence reports, Mughniyah
11 himself filmed the event, the truck bombings of the marine
12 barracks, from a nearby hilltop, which is a film that actually
13 Witness X has, in fact, seen. The result of the simultaneous
14 bombing of the two barracks in Lebanon caused President Reagan
15 to pull the United States marines out of Lebanon. This was an
16 enormous signal to Iran and to Hezbollah that they could
17 directly affect U.S. policies with spectacular and simultaneous
18 bombings, simultaneous to show the organized coordinated threat
19 that they really posed. Because that happened, Mughniyah
20 became convinced, and convinced everyone else in the terrorist
21 world that this was the best way to affect American foreign
22 policy, and he convinced bin Laden of this and al Zawahiri at
23 the 1993 meeting in Khartoum, leading to their alliance
24 thereafter.

25 Directly afterward, al Zawahiri, the number two in

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1 Al Qaeda, now number one, repeatedly visited Tehran during the
2 '90s and met with officers in MOIS, including its chief,
3 Ali Fallahian, and the Qods Force Chief, Ahmad Vahidi. This is
4 well documented. This is discussed by many of our experts,
5 including Dr. Bergman, Lopez, Tefft, Timmerman, Mr. Baer, as
6 well as the witnesses. There is no doubt that this meeting
7 occurred. It was well documented in the plea allocution of the
8 man who set up the meeting, Ali Muhammad, who was convicted in
9 New York Federal Court terrorism charges. His plea allocution,
10 which is one of the exhibits in Havlish, lays out in some
11 detail what he did to set up the meeting. That would be
12 Exhibit 31 in Havlish.

13 As Dr. Byman attests, Zawahiri has stated publicly in
14 interviews that before 9/11, Iran and Al Qaeda were
15 cooperating. As part of their cooperation, Iran used Hezbollah
16 as a facilitator. This is very important, as one of the other
17 pieces of evidence will show in a few moments. Again, this is
18 discussed by all of these experts that I have been mentioning.

19 Throughout the 1990s, the al Qaeda-Iran-Hezbollah
20 terrorist training arrangement continued both in Lebanon and
21 inside Iran. Mughniyah himself coordinated these training
22 activities in both countries, but interestingly -- and this is
23 in the testimony of Witness Z -- the IRGC maintained a separate
24 terrorist training camp located in Iraqi Kurdistan, especially
25 for Saudi nationals because of their distinct habits. This was

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1 run by Iran. The reason they did this is because, as I
2 mentioned, at the common level, the everyday person level, the
3 Sunni-Shia animosity remains. So they ran some separate camps,
4 especially in those early days, but it was Shia trainers and
5 Sunni operatives.

6 Now, this terrorist alliance went beyond training and
7 led to specific acts of terrorist strikes directly against the
8 United States and its allies beginning in March 1992, when the
9 Hezbollah terrorist team, operating directly under Imad
10 Mughniyah, truck-bombed the Israeli Embassy in Buenos Aires,
11 Argentina. There is no question who was responsible for this.
12 Our NSA intercepted communications from the Iranian Embassies
13 in Buenos Aires and in Brazil to the Foreign Ministry of Iran,
14 proving Iran's involvement in the attacks. Again, this is
15 discussed by various of the experts, but in particular
16 interesting was Ronen Bergman's information. He has access to
17 the highest levels of Israeli intelligence. He said that there
18 was unequivocal proof -- not a smoking gun, but a blazing
19 cannon of proof -- that Imad Mughniyah and another Hezbollah
20 member, Talal Hamia, actually executed the terrorist bombing of
21 the Israeli Embassy.

22 That was followed shortly thereafter in July 1994 by a
23 second bombing in Argentina of the Asociacion Mutual Issraelita
24 Argentina, better known as AMIA. This is the Jewish Cultural
25 Center in Buenos Aires. The United States, Israel, and

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1 Argentina, all concluded that Iran, Hezbollah, and Imad
2 Mughniyah were directly responsible for the bombing. But the
3 Argentinean investigation went much further and showed that the
4 action was taken at the highest levels of Iran's government,
5 including the Supreme Leader and President Rafsanjani, both
6 defendants in this case. This is discussed in great detail in
7 the Timmerman and Bergman affidavits. Mr. Timmerman was one of
8 the investigators who provided evidence to the Argentinean
9 investigators. Additionally, Witness X, Abolghassem Mesbahi,
10 was a key witness in the AMIA bombing case, working directly
11 with the prosecutors. The Argentines sought issuance of
12 INTERPOL Red Notices for seven or eight top officials of Iran,
13 including major figures in the government, including the
14 Supreme Leader and Rafsanjani. These INTERPOL Red Notices were
15 blocked through some extraordinary international actions at the
16 state level, and that is the subject of the affidavit of Edgar
17 Adamson, one of our other expert witnesses, who was the United
18 States chief law enforcement official assigned to INTERPOL. He
19 discussed the extraordinary measures Iran took to block their
20 top leaders from being arrested and tried for the AMIA bombing.

21 THE COURT: Just indicate what exactly the Red
22 Notice is.

23 MR. FLEMING: The Red Notice, basically, is a look-out
24 notice. It is an official notice from INTERPOL to all member
25 organizations of INTERPOL that certain individuals are wanted,

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1 and arrest warrants are issued or indictments have been issued
2 in countries. INTERPOL cannot actually indict or arrest
3 anyone. It is mainly an information conduit, basically saying
4 these individuals are wanted, to be arrested or extradited, if
5 possible, to Argentina, in this case.

6 The AMIA bombing situation, by the way, the plot
7 thickened even more last year, as the Court may be aware, with
8 the violent death of the Chief Prosecutor Alberto Nisman on the
9 eve of his presentation of evidence to the legislature of that
10 country. He was killed in his hotel room, shot in the head,
11 and the official pronouncements are suicide, but very few
12 believe that. That is a subject for another courtroom and
13 another day.

14 The terrorist campaign continued July 7, 1995. This
15 time in Ethiopia, where Ayman al Zawahiri's Egyptian gunmen
16 associated with the Muslim Brotherhood, which was a precursor
17 to al Qaeda, attempted to assassinate Hosni Mubarak, the
18 Egyptian president, near Addis Ababa. The attempt failed.
19 This is laid out in some detail in the affidavit of
20 Dr. Bergman. But most importantly, the assassins were
21 extricated from the theater in Ethiopia by the IRGC, who
22 arranged for their protection in Lebanon by Hezbollah and
23 inside Iran, in particular, for the assassination team's
24 leader, Mustafa Hamza, who is an associate of al Zawahiri.

25 In May 1996, political pressure from the United

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1 States, Saudi Arabia, and Egypt on Sudan forced the expulsion
2 of bin Laden. As is pretty well known, he moved to
3 Afghanistan. Bin Laden and his Al Qaeda associates relocated
4 to Afghanistan with the assistance of the Iranian Intelligence
5 Services, as set forth in the affidavit of Ronen Bergman.
6 After bin Laden and al Zawahiri had moved to Afghanistan, at
7 that time, Iranian authorities continued to help them, on many
8 occasions passing weaponry and reinforcements across the border
9 to the Al Qaeda camps.

10 The next significant event occurred on June 25, 1996,
11 the Khobar Towers bombing in Dhahran, Saudi Arabia, which
12 killed 19 U.S. soldiers and wounded 500. It was an enormous
13 bombing. The FBI said it was the largest manmade explosion on
14 earth since Hiroshima, or Nagasaki, I guess technically. The
15 FBI sent investigators to Saudi Arabia, who concluded, on a
16 tremendous amount of evidence, the operation was conducted as a
17 joint operation by Iran and Hezbollah, with involvement of
18 Al Qaeda, and that it was done on direct order of senior
19 Iranian government leaders and that the bombers were funded and
20 trained by the IRGC in Lebanon's Bekaa Valley, which is the
21 home of Hezbollah. The 9/11 Commission itself examined
22 classified CIA documents and established IRGC Qods Force
23 Commander Ahmad Vahidi planned the Khobar Towers attack with
24 Ahmad al Mugassil, who is a Saudi-born Al Qaeda operative. And
25 the U.S. District Court in the District of Columbia ruled that

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1 Iran was factually and legally responsible for the Khobar
2 Towers bombing in the Heiser v. Iran case. The 9/11 Commission
3 noted that Al Qaeda was involved in the planning and the
4 preparation of the Khobar Towers bombing and that Osama bin
5 Laden's role was that he facilitated a shipment of
6 explosives to Saudi Arabia that was used in the bombing; and
7 further, that the NSA intercepts revealed that bin Laden was
8 specifically talking to people on his satellite telephone,
9 congratulating each other for the Khobar Towers attack.

10 Indeed, the next month, in August, Osama bin Laden
11 made his first fatwa against the United States, where he
12 specifically cited the Khobar Towers bombing as his
13 accomplishment, saying, "The crusader army became dust when we
14 detonated al Khobar."

15 An interesting episode occurred immediately thereafter
16 that is documented well by Robert Baer, who was one of the most
17 accomplished CIA agents in the field in this entire arena. He
18 was specifically the person who had the Imad Mughniyah
19 portfolio. He was on the trail of bin Laden. And he documents
20 in two of his books how an Iranian intelligence operative who
21 was directly involved in the Khobar Towers bombing in June of
22 1996 met with Osama bin Laden in Jalalabad, Afghanistan, in
23 August 1996, to discuss the continuing secret strategic
24 agreement to undertake a joint terrorism campaign against the
25 United States. He also documents at this very time one of

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1 bin Laden's most dangerous associates was meeting with one of
2 Mughniyah's colleagues at his offices in Beirut. At the very
3 same time, Iranian and Hezbollah trainers were traveling
4 between Iran and Afghanistan, transferring Al Qaeda blueprints
5 and drawings of bombs and other materials, and that is
6 documented in the Bergman affidavit. And I would note, also,
7 that Witness Y was one of those trainers who was traveling back
8 and forth, and testifies as such during that time period, doing
9 exactly what Bergman says was going on between Iranian and
10 Hezbollah trainers in al Qaeda camps in Afghanistan, and
11 Witness Y testifies in some detail about that.

12 As Lopez and Tefft's affidavits conclude, there is
13 overwhelming evidence that Al Qaeda and the highest levels of
14 the Iranian regime were acting in concert to plot and execute
15 attacks against the United States throughout this entire
16 period. Dr. Bergman says essentially the same thing.

17 That leads to February 23, 1998, when Osama bin Laden
18 issued his second public fatwa in the name of the World Islamic
19 Front, calling for the murder of Americans "as the individual
20 duty for every Muslim who can do it in any country in which it
21 is possible to do it."

22 A few months later only, August 7, 1998, the United
23 States Embassies in Kenya and Tanzania were truck-bombed
24 simultaneously, consistent with the Mughniyah design. These
25 killed more than 300 persons and wounded more than 5,000, and

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1 the responsibility for these heinous attacks is well documented
2 in the courts of the United States. It was committed by
3 Al Qaeda operatives. This is also part and parcel of the
4 confession and plea allocution of Ali Muhammad, which is
5 Exhibit 31 in Havlish. He led the team that cased the embassy,
6 if you will, in Nairobi, beginning several years before and,
7 interestingly, shortly after the Khartoum meeting that created
8 the alliance. This is noted in the 9/11 Report at page 68.
9 Again, the twin bombings bore the unmistakable modus operandi
10 of Imad Mughniyah. A United States District Court in
11 Washington, D.C. held that Iran, the IRGC, and MOIS were
12 factually and legally responsible for the U.S. Embassy bombings
13 in Kenya and Tanzania in the Owens v. Republic of Sudan case.
14 Sudan also was liable. But, noteworthy, it is al Qaeda
15 operatives who carried out the U.S. attacks. They were trained
16 by Hezbollah in handling the sophisticated explosives used, and
17 the government of Iran was fully aware and authorized the
18 training and assistance in the attacks. Among those who
19 trained in the Hezbollah camps at the time was a man named Saef
20 al Adel, who was convicted in absentia in the United States for
21 his role in the twin embassy bombings and who spent the years
22 after 9/11 in safe haven inside Iran, an undisputable fact.

23 The next significant event is the October 2000 suicide
24 bombing of the U.S.S. Cole in the harbor of Aden, Yemen, which
25 killed 17 Navy sailors and injured 39 more. As documented in

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1 the affidavits of Lopez, Tefft, and Kenneth Timmerman, at just
2 that time, the U.S. Defense Intelligence Agency Analyst Kie
3 Fallis was alerting his superiors to a whole web of connections
4 that he was finding among al Qaeda, the Iranian intelligence
5 agencies controlled by the Supreme Leader of Iran, Hezbollah,
6 and other active terrorist groups.

7 The 9/11 Commission Report noted this, as well, at
8 page 240, when they said, "Iran made a concerted effort to
9 strengthen relations with Al Qaeda after the October 2000
10 attack on the U.S.S. Cole."

11 At pages 240, 241, the report also states that during
12 this same time frame, Iranian officials facilitated the travel
13 of Al Qaeda members, including some of the 9/11 hijackers,
14 through Iran on their way to and from Afghanistan, where the
15 hijackers trained at Al Qaeda's terrorist training camp.

16 The conclusion from all of that is that throughout the
17 1990s, it is very well documented and accepted in the 9/11
18 Commission Report itself that Iran, Hezbollah, and Al Qaeda
19 were working together constantly on terrorist operations,
20 training, equipment, movement of operatives, and worked very
21 closely together on a whole string of attacks, and this leads
22 directly to 9/11.

23 Dietrich Snell is one of our experts who has an
24 extremely impressive resume of professional work in the
25 counterterrorism field as a prosecutor, as an investigator, and

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1 as the senior counsel to the 9/11 Commission, in particular was
2 the team leader for analyzing and sorting out and gathering the
3 evidence for and writing the report with regard to the 9/11
4 conspiracy itself. Dietrich Snell gave a detailed affidavit to
5 our legal team, in which he concludes, "There is clear and
6 convincing evidence pointing to the involvement on the part of
7 Hezbollah and Iran in the 9/11 attacks, especially as it
8 pertains to travel facilitation and safe haven."

9 Dietrich Snell is a very careful lawyer and is a very
10 experienced prosecutor. When he says there is clear and
11 convincing evidence, that definitely means what he is saying.
12 He knows what he is saying. Dietrich Snell, actually, was a
13 liaison even previously to the FBI's own investigation, which
14 was called the PENTTBOM team. The FBI had already figured out
15 before the 9/11 Commission was created that the hijackers
16 transited Iran to and from Pakistan and Afghanistan in
17 furtherance of the conspiracy, and as Snell explains, this
18 explains the absence of a clear document trail. And he points
19 out that Ramzi Binalshibh and Khalid Sheikh Mohammed
20 corroborate Iran's role in this regard. I will go through this
21 in some detail in a moment.

22 One of our other experts, Dr. Daniel Byman --

23 THE COURT: Before we go to Dr. Byman, let me give the
24 court reporter a 10-minute break, and then we will continue.

25 MR. FLEMING: Yes, your Honor.

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(Recess)

THE COURT: You can continue.

MR. FLEMING: Thank you, your Honor.

As I mentioned just before the break, Mr. Dietrich Snell, the veteran prosecutor in terrorist cases, was the 9/11 Commission's liaison to the PENTTBOM team of the FBI. As part of his investigation into the nature of the conspiracy, the plot that led to 9/11 itself, he saw the FBI's evidence that the hijackers transited Iran to and from Pakistan in furtherance of the conspiracy.

As our expert Dr. Daniel Byman attests, keeping the passports of the hijackers clean and devoid of stamps that would raise the attention and suspicions of INS agents at the border or consular officials in the embassies abroad, this was vital to reducing the risk of discovery and arrest and the successful completion of Quod. As Dr. Byman's says, travel assistance is invaluable; also, as a general matter, for al Qaeda to make recruitment and training easier, and enabling the communication and coordination of terrorist operations is vital.

Thus, we obtained the affidavit of the 9/11 Commission's staff member Janice L. Kephart, who was on the travel team. It was her responsibility for her and her team to investigate how the hijackers got into the United States and how they were able to do so without detection. Ms. Kephart was

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1 responsible for determining what happened with respect to the
2 so-called 20th hijacker because the plane that ultimately
3 crashed in Shanksville, Pennsylvania, had one fewer muscle
4 hijacker, if you will, than the other planes did. It was
5 Ms. Kephart who discovered what had happened there. In brief,
6 it was that an alert INS inspector at the airport in Orlando,
7 Florida, became suspicious of a person seeking entry in Orlando
8 in the several months prior to 9/11. His name was al-Qahtani,
9 Mohammed al-Qahtani, and he was denied entry into the United
10 States. He was supposed to be the 20th hijacker and the fifth
11 hijacker that went down in Shanksville. This turned out to be
12 absolutely critical in the operation itself because, as we all
13 know, it was the only flight that did not reach its
14 destination, the only hijacked flight that did not reach its
15 destination and precisely because the passengers, who did get
16 apparently cell phone messages of what was happening on that
17 day, but they took on the highjackers in the cabin and
18 overwhelmed the hijackers, who again were missing one hijacker,
19 and they were able somehow to get to the cockpit and disrupt
20 the flight that was on its way to Washington, D.C. to hit
21 either the United States Capitol or the White House. That
22 plane, instead, went down in Shanksville, Pennsylvania. The
23 lead plaintiff in our case, Alice Hoglan, her son is Mark
24 Bingham and was one of those hijackers who famously said,
25 "Let's roll," and was part of the passengers that took on the

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1 highjackers and prevented that flight from reaching its
2 destination in Washington. So we're very proud to have her as
3 our lead plaintiff.

4 In any event, Janice Kephart's affidavit goes in great
5 detail as to the terrorist travel. In fact, she writes very
6 persuasively that not only is it crucial to the success of the
7 overall operation, but itself, the coordinated travel plan,
8 constituted a specific terrorist operation in and of itself
9 that had to be coordinated.

10 The 9/11 Commission wrote -- and it's possibly the
11 most famous, certainly one of the most often quoted portions of
12 it -- "For terrorists, travel documents are as important as
13 weapons." Because the travel operation was so coordinated and
14 so well planned out, Kephart concluded that the facilitation of
15 the Al Qaeda operatives traveled by Iran, as you will see in a
16 moment, including at least eight of the 9/11 hijackers,
17 amounted to essential material support, indeed direct support,
18 that further enabled Al Qaeda to perpetrate the 9/11 attack
19 successfully except, as I say, for the fourth plane that was
20 brought down in Shanksville, Pennsylvania.

21 Now, as to that terrorist travel operation, there were
22 two separate but related ways in which Iran furnished material
23 and direct support for the hijackers' operation. First -- and
24 this is in the 9/11 Commission Report, detailed at pages 240
25 and 241 -- Iran facilitated the transit of Al Qaeda members,

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1 the hijackers, into and out of Afghanistan before 9/11 by
2 ordering its border inspectors not to place telltale stamps in
3 the passports of these future hijackers as they traveled to and
4 from Afghanistan and the training camps via Iran. This is
5 critical because Afghanistan was on the State Department's list
6 as a state sponsor of terror, and a traveler arriving at a U.S.
7 airport with a stamp indicating they had been to Afghanistan
8 or, for that matter, Iran would almost certainly be denied
9 entry. If they applied for visas or passports in Saudi Arabia,
10 having gone through Pakistan, they would also have been denied
11 passports by the Saudis upon the appearance of a Pakistani
12 stamp. Therefore, the hijackers moved to the al Qaeda training
13 camps in Afghanistan through Iran, where they had made
14 arrangements not to have their passports stamped. The 9/11
15 Commission said -- and this is Dietrich Snell in particular --
16 that it obtained evidence that 8 to 10 of the 14 Saudi muscle
17 operatives traveled into or out of Iran between October 2000
18 and February 2001. That is on page 240. This was essential
19 for the success of the 9/11 operation, for the reasons I
20 stated. It is clear that al Qaeda knew that the Americans were
21 well aware of the existence of the al Qaeda training camps in
22 Afghanistan, and it was a state sponsor of terror. They knew
23 that they would be denied entry or be denied visas entirely.

24 Further, NSA intercepts made available to the 9/11
25 Commission just in the few days before the publication of the

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1 9/11 report showed that the Iranian border inspectors had been
2 ordered not to place telltale stamps in the operatives'
3 passports and that the Iranians were aware they were helping
4 operatives of al Qaeda who were preparing attacks against the
5 United States. At least three of the Saudi hijackers who went
6 through Iran on their way to Afghanistan were carrying
7 passports with indicators of Islamic extremism and that these
8 were probably Al Qaeda calling cards used by the terrorists to
9 identify themselves to the Iranian border inspectors.

10 The 9/11 Commission Report concluded that the actions
11 of the Iranian border authorities in refraining from stamping
12 the passports of the Saudi hijackers vastly increased the
13 likelihood of the operational success of the plot. We don't
14 know, as the attorneys, what the indicators of Islamic
15 extremism were because that's classified information, and
16 Ms. Kephart cannot reveal it, but there is no doubt in her mind
17 and in the Commission's mind that these indicators in the
18 passport appeared to be identifying the Al Qaeda operatives to
19 the border inspectors, who would not then stamp their
20 passports. Corroborating that is the fact that, as is
21 documented in United States Treasury Department reports in the
22 mid-1990s, which is the time period when the
23 Iran-Hezbollah-Al Qaeda terror alliance was forming that I
24 described earlier, the al Qaeda operative Mustafa Hamid had
25 negotiated a secret relationship with Iran that allowed safe

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1 transit via Iran to Afghanistan. That is a direct quote from
2 Exhibit 30, U.S. Treasury Department press release, January 16,
3 2009. This safe passageway was managed by MOIS. Additionally,
4 numerous admissions from Al Qaeda prisoners at Guantanamo Bay
5 confirmed the existence of the clandestine Iran-Afghanistan
6 passageway managed by MOIS.

7 There is a good deal more information about the
8 existence of this clandestine passageway in the affidavit of
9 Jean-Louis Bruguiere, one of our experts. Mr. Bruguiere is the
10 most prominent terrorism investigator in Europe. He was the
11 top official in France, and he was an investigative judge, top
12 official in France investigating terrorism for many years. He
13 is credited as the person who basically discovered the
14 existence of Al Qaeda in the early 1990s, prosecuted many
15 terrorists, uncovered many of the linkages between the various
16 terrorist groups that became Al Qaeda, and was instrumental in
17 disrupting an Al Qaeda plot in the 1990s of a hijacked plane
18 which was destined for Paris that was going to be crashed into
19 the Eiffel Tower. This happened in the mid-1990s, and France
20 was able to abort that at a refueling stop and prevent that
21 disaster.

22 Mr. Bruguiere met with myself, Mr. Hailey, Mr. J.D.
23 Lee, and Kenneth Timmerman in this case several times, and he
24 wrote that affidavit, and prominent among the affidavits, one
25 of the reasons we most wanted it, is that his investigations

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1 discovered and documented very well, through his interrogations
2 of prisoners, the existence of what he called the rat
3 line leading all the way from Europe through Iran to
4 Afghanistan to the Al Qaeda camps. And it turns out that this
5 is the passageway that the Al Qaeda hijackers used in order to
6 reach bin Laden's training camps without any evidence in their
7 passports.

8 The second way in which Ms. Kephart details that Iran
9 facilitated the travel operation of the 9/11 hijackers is that
10 Hezbollah's chief terrorist agent escorted and helped
11 coordinate travel and security of the future hijackers; that
12 is, specifically the 9/11 Commission Report states, at
13 pages 240 and 241, that in October 2000, a senior operative of
14 Hezbollah visited Saudi Arabia to coordinate activities there.
15 He also planned to assist individuals in Saudi Arabia in
16 traveling to Iran during November, and a top Hezbollah
17 commander and Saudi Hezbollah contacts were involved.

18 Then, in November 2000, one of the muscle hijackers
19 specifically was determined, Imad Mughniyah, to have flown to
20 Beirut on the same plane as a, quote/unquote, senior Hezbollah
21 operative. Our investigation revealed the name of that senior
22 Hezbollah operative, and that is detailed in the second
23 affidavit of Kenneth Timmerman. And I believe it was confirmed
24 publicly at one of the public hearings, but it is very
25 difficult to find otherwise. The senior Hezbollah operative

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1 was Imad Mughniyah, who again is the most dangerous terrorist
2 in the world of his time, the terrorism chief of Hezbollah, and
3 responsible for the deaths of more Americans and more
4 Westerners worldwide than any other single person.

5 Further, in November 2000, the three muscle hijackers,
6 having obtained U.S. visas in Saudi Arabia, traveled as a group
7 from Saudi Arabia to Beirut and then onward to Iran. An
8 associate of the senior Hezbollah operative was on that same
9 flight. And finally, that Hezbollah officials in Beirut and
10 Iran were expecting the arrival of a group during the same time
11 period. Travel of this group was important enough to merit the
12 attention of senior figures of Hezbollah.

13 Now, of course, the three hijackers in question were
14 not known to be important people. They were rather ordinary.
15 That they were received in Beirut and on the way and then in
16 Iran by senior figures of Hezbollah and accompanied by a close
17 associate of Imad Mughniyah is extraordinary and telling. What
18 was happening at this time, of course, is that the muscle
19 hijackers, who were inexperienced generally, were obtaining
20 their new passports and obtaining visas at the United States
21 consulate and then needing to travel internationally to get to
22 the camps. It was very important that that be done
23 successfully; that that be done without giving anything away,
24 and also that they don't back out. And Imad Mughniyah made it
25 his personal business to escort them and make sure that those

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1 things happened as planned. This is part of the direct
2 testimony of Witness Y, who was privy to certain details in
3 that exact regard. The fact that Imad Mughniyah was the senior
4 Hezbollah operative is something of a game changer, would have
5 been something of a game changer, and on our legal team, we
6 always suspected the reason his name was not placed in the
7 report is that it would have really sort of upset the apple
8 cart, and this all happened, the 9/11 Commission found out
9 about all of this information just a few days or maybe a few
10 weeks before the publication of the report and the date on
11 which the Commission would go out of existence. And it was due
12 to the enterprising work of one particular staff member named
13 Lorry Fenner, an Air Force Captain, who did the perhaps
14 otherwise thankless work of going to the reading room and going
15 through the NSA intercepts, files and files, cabinet files
16 worth of material, and she found this, when all of the other
17 staff members were working on the FBI beat and the CIA beat and
18 the government beat. She went and read the NSA materials and
19 came back to the more senior members of the staff, showed them
20 what she had found. And they took that to Philip Zelikow, the
21 Executive Director of the 9/11 staff, who actually said, we
22 have to hold the presses, because the Commission Report was due
23 out in a few days. They held it over for four days before they
24 published the report. He took a team to Fort Meade to look at
25 those NSA intercepts, which by the way, as Lopez and Tefft

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1 describe, two very experienced CIA veterans, those are the gold
2 standard of intelligence, and it's unfortunate they weren't
3 looked at until the last minute. But Zelikow said, hold the
4 presses, we have to look at this. The product was pages 240
5 and 241, which were inserted into the text of the 9/11
6 Commission Report, which as Mr. Foote read earlier, culminated
7 with the sentence, "We believe this topic requires further
8 investigation by the U.S. Government." No such investigation
9 has been made public, if one has occurred at all, but as
10 Mr. Foote explained, that was the starting point really for the
11 Mellon legal team. And it is because of the importance of Imad
12 Mughniyah and the travel facilitation to the overall plan, it
13 is an extraordinarily important part of the 9/11 Commission
14 Report.

15 Now, to be sure, Dietrich Snell also, in his
16 affidavit, found out about this information, and in order to
17 try to corroborate it, he drafted questions which he passed on
18 to the FBI or the CIA and the military through the channel that
19 had been established, he passed questions about this topic to
20 the interrogators, the authorities at Guantanamo, and these
21 questions were put to Ramzi Binalshibh and Khalid Sheikh
22 Mohammed. Khalid Sheikh Mohammed I will have more to say about
23 in a moment, but he is the 9/11 so-called mastermind, which I
24 will basically debunk that in a moment. Ramzi Binalshibh, who
25 was supposed to be one of the hijackers, could not get a visa

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1 and became the liaison. He was the Hamburg, Germany, roommate
2 of Mohammed Atta, and together they led the Hamburg cell of
3 al Qaeda. Ramzi Binalshibh was ultimately captured and is at
4 Guantanamo. Dietrich Snell drafted the questions regarding
5 these travel members to be put to Khalid Sheikh Mohammed and
6 Ramzi Binalshibh, to see if it corroborated the NSA intercepts.
7 And indeed, he got back the information very quickly and,
8 indeed, it did. As Binalshibh and KSM confirmed, that 8 to 12
9 of the muscle hijackers moved through Iran to Afghanistan in
10 order to avoid telltale stamps in their passports.

11 Binalshibh himself, as I mentioned, was the
12 coordinator, and he reported directly to Osama bin Laden in
13 Afghanistan. Eight months before 9/11, Ramzi Binalshibh stopped
14 in Tehran, Iran, en route to meetings with al Qaeda leaders in
15 Afghanistan. This is important, and it is not in the 9/11
16 Commission Report. This is information and evidence that the
17 Mellon legal team obtained in Europe and presented to this
18 Court in Havlish. That is Exhibit 18. We got this material,
19 myself and Mr. Hailey, and Mr. J.D. Lee, as well as Ken
20 Timmerman, and met with the federal prosecutors in Karlsruhe,
21 Germany, and they gave us the documents that proved that Ramzi
22 Binalshibh had, on his way to meet with bin Laden in
23 Afghanistan, traveled and stopped in Tehran en route. This is
24 incredibly important information because Binalshibh, as I said,
25 was a very, very important member and was the liaison between

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1 bin Laden and Mohammed Atta, who was the pilot of the plane
2 that hit the North Tower of the World Trade Center.

3 The federal prosecutors in that meeting, they also, in
4 that meeting, vouched for the credibility of Abolghassem
5 Mesbahi, who they were familiar with from the Mykonos
6 prosecution and other cases and had been working with Mesbahi
7 over a period of several years.

8 Now, precisely during the time that Binalshibh was
9 traveling between Europe and Afghanistan via Iran, Iran was
10 hosting a secret meeting of al Qaeda terrorists and Hezbollah
11 representatives and Iranian officials, intelligence agency in
12 the political realm. These meetings included Ayman al Zawahiri
13 and Saef al Adel. Saef al Adel was the number three in
14 al Qaeda at the time, and he still to this day, I believe,
15 lives in Iran, or did until recently, at least. Also present
16 was Imad Mughniyah, who is again the terrorist chief of
17 Hezbollah. This is in the sealed testimony of Witness Z in
18 great detail.

19 Now, from there, we note that there is a conclusion
20 regarding the travel. The Iranian travel facilitation by Iran
21 helped ensure their continued training and access to the United
22 States, as concluded by Dr. Tefft and Ms. Lopez.

23 Returning to Imad Fayez Mughniyah, whose role as the
24 senior Hezbollah operative, as referenced on page 240 and 241,
25 is absolutely critical. He is a well-known figure. He is now

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1 deceased, killed in an assassination in 2008 in Damascus,
2 Syria. Robert Baer has written extensively on him because Baer
3 was basically the CIA agent on Mughniyah's trail for many, many
4 years. Ronen Bergman, Timmerman, Lopez, and Tefft all write
5 extensively about Mughniyah's terrorist pedigree, as well as
6 his involvement in particular acts of terrorism against the
7 West. The testimony of Witnesses X, Y, and Z do the same and
8 in some great detail, as all three of them knew Mughniyah
9 rather well, and they have extensive testimony about Mughniyah.
10 Dr. Bergman notes that Mughniyah conceived, designed, planned,
11 commanded and/or carried out terrorist operations involving
12 hundreds of deaths, more than any other single figure in the
13 world, and he was an agent of Iran and lived in Iran for many
14 years as the chief of terrorism operations for Hezbollah. He
15 was the individual again, to recap, that came to Khartoum,
16 Sudan, for the 1993 meeting with bin Laden and al Zawahiri and
17 Iranian General Zolqadr and originated the concept of suicide
18 attacks performed simultaneously in order to affect Western
19 foreign policy.

20 Now, Dr. Bergman had access, because of his extensive
21 connections with the intelligence community in Israel, to two
22 top secret, highly classified Israeli documents which disclose
23 that Iran is aided by Hezbollah's operational infrastructure
24 through Mughniyah, for the purpose of attacks, and that it
25 almost always employs Mughniyah for those attacks. Now,

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1 Bergman's affidavit has an attachment to it, which is a copy of
2 a May 14, 2001 letter from Ali Akbar Nateq Nouri, to the head
3 of the Iranian intelligence apparatus at the time, Mustapha
4 Pourkanad.

5 Nateq Nouri has held many very high offices in Iran,
6 including the speaker of the parliament, but he also was at
7 this time the head of the Supreme Leader's unnamed auxiliary
8 intelligence office, if you will, that reported directly to the
9 Supreme Leader and was otherwise unknown to the Western world.
10 Now, Dr. Bergman says that the May 14, 2001 letter is
11 authentic, having been examined by top officials in the United
12 States intelligence community and in Israeli intelligence
13 community, and I can add the French intelligence community,
14 because that letter itself, Bergman had a copy of it, that
15 letter is an exhibit to one of the defector witness's testimony
16 in this case. He didn't have the copy of it; he had the
17 original. And he holds it up for the camera for the Court to
18 see. That document, as Dr. Bergman says, reveals high-level
19 links between the Supreme Leader's intelligence apparatus,
20 which is headed by Nateq Nouri, and Al Qaeda, and involves
21 knowledge and support of a major upcoming operation, the goal
22 of which was to damage America's and Israeli's economic
23 systems, discrediting their institutions and, as part of a
24 political confrontation, undermining their stability and
25 security. 9/11 did all that, of course, in an unprecedented

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1 way and by many orders of magnitude. It changed, as we all
2 know, the entire way the entire federal government almost is
3 organized and has made fundamental changes in our daily lives,
4 which we all experience every day. We experienced it coming
5 into this courtroom. That was part of the goal. The May 14th,
6 2001 letter states that.

7 More specifically, Nateq Nouri says in that memo that
8 he is speaking for the Supreme Leader himself, and he talks
9 specifically about al Qaeda's plans for the impending terrorist
10 strike against the United States. It has been reviewed and
11 found authentic by intelligence agencies in Israel, Europe, and
12 the U.S., and I would add, in France, according to the
13 defector's testimony. It references specifically, it directly
14 connects Iran and Mughniyah to al Qaeda and to the planned
15 attack that was forthcoming. Again, this was May 14, 2001. It
16 refers to Iran's support for al Qaeda's future plans and
17 cautions the intelligence service headed by Pourkanad, it
18 cautions them to be alert to the possible negative future
19 consequences of this cooperation between Iran and Al Qaeda, and
20 it says the Supreme Leader emphasized that with regard to
21 cooperation with al Qaeda, no traces must be left that might
22 have negative and irreversible consequences, and that the
23 activity must be limited to the existing contacts with Imad
24 Mughniyah and al Zawahiri.

25 We would submit that this memorandum clearly refers to

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1 the upcoming 9/11 attacks and anticipated retaliation by the
2 United States, and it was very important because they did not
3 want Iran to be known to have been supporting it, did not want
4 Iran to be attacked, which is something, by the way, that makes
5 imminently good sense, not only for Iran to be attacked, but
6 they knew since bin Laden was going to take credit for it, they
7 knew that in all probability the United States would attack
8 Afghanistan instead, where Iran's hated enemy, the Taliban, was
9 in power. And as Dr. Clawson and Dr. Byman note in their
10 affidavits, the overthrow of the Taliban was decidedly in
11 Iran's interests.

12 Now, there is, of course, in the same defector's
13 testimony, a second document, which was a follow-up memorandum,
14 which I won't discuss in great detail here, but it is known to
15 be in the hands of the French intelligence agencies, and it
16 describes in some more great detail the timing of the expected
17 attack, being basically telling the intelligence committee in
18 Iran to be ready as of September 1st.

19 Now, moving on to defector Witness X, Abolghassem
20 Mesbahi, as I mentioned, although the testimony itself is
21 sealed, Mr. Mesbahi has authorized us to reveal his name and
22 the substance of much of his testimony because he thinks it is
23 important. Abolghassem Mesbahi was known to be an excellent
24 intelligence operative, known by the Israeli intelligence
25 agency's Mossad, which was tracking him for many years, knew

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1 about Mesbahi. In fact, Mr. Bergman's book, which I happened
2 to bring a copy of, he notes in his affidavit, similarly, that
3 Mesbahi was known to be the chief of intelligence for Iran in
4 Paris until he became persona non grata literally and left the
5 country, and then he became Iran's chief spy in Western Europe,
6 headquartered in Belgium. Importantly, in the book,
7 Dr. Bergman devotes an entire chapter to Mesbahi, saying the
8 Israelis for years were trying to get him and never could.
9 They knew that he was an excellent operative, first-class
10 operative, and they were never able to get him, and they hold
11 him responsible for numerous acts that really are not germane
12 here, but he was not only under radar screen, but they knew a
13 lot about him.

14 After Mesbahi changed his stripes, if you will, and
15 defected to the West and began working with Western
16 intelligence and law enforcement, and he became probably the
17 leading defector witness and the leading intelligence agent in
18 terms of providing valuable information and evidence to Western
19 prosecutors and intelligence agencies, probably unsurpassed by
20 any other figure. Dr. Bergman states that Mesbahi was an
21 important asset to the investigation of many assassinations and
22 acts of terror by the Iranian regime and its proxies in several
23 countries and that Mesbahi's testimony has been received with
24 high reliability by the courts and by law enforcement and by
25 intelligence agencies worldwide. As I mentioned, he was a key

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1 witness in the Mykonos prosecution and in the AMIA
2 investigation in Argentina.

3 Mesbahi himself was a regime insider. He was from a
4 well educated family, and he was something of a prodigy
5 himself. He speaks five languages. He has got several
6 advanced degrees in various areas. I have spent many days with
7 Mesbahi. He is a very, very bright individual. He is also a
8 very repentant individual in the sense he regrets deeply his
9 role as a MOIS agent and the top operative who was involved in
10 terror campaigns, and he is doing everything he can at this
11 part of his life to atone for that and help the West battle the
12 regime in Tehran and to defeat terrorism.

13 He personally knew Ayatollah Khomeini from the time he
14 was a small child due to his family connections, and he knew
15 and worked for the other individual defendant in this case, Ali
16 Akbar Hashemi Rafsanjani, having served under him during the
17 Iran-Iraq War of 1980. This he describes in some really very
18 difficult detail in his testimony, particularly where he
19 describes how Rafsanjani callously sent waves of Iranian boys
20 to their deaths in battles that they could not win. And this,
21 he said, was the starting point of when he began to realize
22 that this regime was corrupt and inhumane and not to be
23 cooperated with. It was at that point he began to wonder about
24 his own role, but it was years before he got out, and he did
25 many things still in service of the regime thereafter.

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1 He was also a friend of Saeed Emami, who was the top
2 official of MOIS. He held a number of prominent positions.
3 Like I say, he began at the Iranian Embassy in France when he
4 was a very young man. He was involved in the Islamic
5 Revolution when he was a very young man. He was in charge of
6 espionage in France and later throughout Western Europe. He
7 subsequently played a significant role in the Lebanon hostage
8 crisis in the 1980s, being Iran's liaison to the Prime Minister
9 of Sweden with regard to some of the hostages that were of
10 Swedish descent.

11 Mesbahi returned to Iran in 1984 and '85 to work on
12 the creation and organization of the new intelligence service
13 which turned out to be MOIS. He was in that from the very
14 beginning.

15 As I mentioned, there's been an undeclared war going
16 on between the countries for years, but in the 1980s, so many
17 hostages were being taken; many terrorist attacks, hijackings,
18 assassinations were going on. The threat of war between the
19 United States and Iran was constant. The Iranian government
20 knew that it could not defeat the United States in a
21 conventional war. So, in the mid-1980s, the Iranians formed an
22 MOIS-IRGC task force that was charged with the responsibility
23 to come up with contingency plans for asymmetrical warfare
24 against the United States; basically, a long way of saying
25 terrorist operations that might be used against the United

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1 States to prevent the United States from engaging in a full-on
2 military war with Iran. Remember, they had had the lesson
3 already in 1983 from the marine barracks bombings that they
4 could affect American foreign policy overseas by spectacular
5 terrorist attacks. So they began a task force to create
6 contingency plans for asymmetrical warfare. Mesbahi was one of
7 its principal members. Now, there is some corroboration for
8 this in the United States State Department report, country
9 reports, which is Exhibit 13 in Havlish, which says that in the
10 1987 report -- this is page 56 of Exhibit 13 -- the country
11 report on terrorism states, although no Iranian backed
12 terrorist attacks were staged against specific U.S. targets
13 during the year, we believe that during the summer of 1987 Iran
14 began to formulate contingency plans for anti-U.S. operations.
15 That is exactly what Mesbahi testifies to.

16 He testifies in great detail about what they did.
17 These contingency plans were aimed at breaking the backbone of
18 the American economy, crippling and disheartening the United
19 States and its people, the government, disrupting the economic,
20 social, military, political order, but not risking a
21 head-to-head military confrontation, which Iran knew it would
22 lose. And therefore, they would use terrorist acts by proxies.
23 Importantly, among other things -- and there were many plans
24 that Mesbahi describes -- one of them was that the MOIS-IRGC
25 task force devised a scheme to crash hijacked Boeing 747s into

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1 major American cities, principally New York and Washington.

2 And the targets from the very beginning, the assumed targets or
3 identified targets from the very beginning were the World Trade
4 Center in New York, the White House, and the Pentagon in
5 Washington, D.C.

6 The contingency plan's code name was -- this is the
7 whole set of plans, and Mesbahi describes many of the others,
8 and they involve things like attacking nuclear plants,
9 hijacking oil tankers on the highways and crashing them,
10 bombing gas stations where there were lots of people, and many
11 others -- but the contingency plan as a whole, its code name
12 was "Shaitan dar Atash," which is Farsi for "Satan in Fire" or
13 "Satan in Hell." The Shaitan dar Atash plans used a variety of
14 tactics, as I said, chemical weapons and radioactive dirty
15 bombs among them, power plants, and so forth. But one of them
16 was the use of passenger airliners as bombs or missiles to
17 attack U.S. cities. They specifically decided upon 747s
18 because of their large fuel tanks.

19 Now, at this point, I would like to mention that the
20 9/11 Commission Report accepts, or at least it cites, the
21 statements of Khalid Sheikh Mohammed as the mastermind or the
22 architect of 9/11 from A to Z. That's in his plea allocution
23 in Guantanamo, but it is one line. He literally says, "I was
24 the mastermind of 9/11 from A to Z." But he doesn't spell out
25 A, B, C, D, or anything. He just says it. And there is

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1 actually very, very little -- in fact, there is no evidence --
2 that KSM was the mastermind of 9/11 other than his own
3 bragging. In fact, Robert Baer wrote a column published in
4 Time Magazine in 2007 called "Why KSM's confession rings
5 false." It mentions that KSM basically comes across as
6 boasting or possibly even mentally unstable, because indeed his
7 guilty plea at Guantanamo takes credit for almost every
8 terrorist operation ever conducted or ever conceived, including
9 wild things like the attempt to assassinate the Pope, attempt
10 to assassinate President Clinton in Malaysia, and myriad other
11 plans. Robert Baer is not buying it.

12 What is really interesting, it is public information
13 that KSM was waterboarded by the CIA at Guantanamo 187 times.
14 He ended up talking a lot. The problem is that the 9/11
15 Commission Report, 567 pages, I think it is, contains hardly a
16 word about KSM's supposed authorship of the 9/11 operation.
17 There's about two sentences total, and they don't say anything
18 at all. You would think that a man who has taken credit for
19 and was the mastermind from A to Z of every detail would have
20 told the interrogators a great deal about how they developed
21 the plan, how he developed the plan, which was incredibly
22 sophisticated and evilly ingenious in its scope, and yet he
23 can't do it because he didn't do it. He can't explain it
24 because he was not the architect of the plan.

25 There are more details in the 9/11 Commission's Report

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1 about KSM's wild plan to hijack a dozen airliners over the
2 Pacific Ocean called the Bojinka plot or the outlandish plot to
3 assassinate President Clinton than there is about the 9/11
4 plot. There are no details at all on the evolution of the 9/11
5 plan at pages 149 and 150, 155 to 156. There is nothing about
6 how they decided upon the numbers of terrorists per plane, the
7 use of box cutters as weapons, how to coordinate the timing,
8 how to take the flights, nothing like that. There is not a
9 word in the 9/11 Commission Report about KSM's handling of
10 those planning details. And it does say that he knew that it
11 would require sophisticated planning and personnel and money
12 and logistical support, but he provides none of those details,
13 and so his taking credit for it is highly suspicious. As I
14 said, Robert Baer, surely an expert in these matters, wasn't
15 buying it.

16 Instead, what happened, we believe, is that Iran
17 delivered the contingency plan for asymmetric warfare. It
18 delivered the Shaitan dar Atash plan to Al Qaeda itself, which
19 then adopted it and used it. There is support for this when
20 Baer notes the planning meetings between the Iranian IRGC
21 officials and bin Laden in Jalalabad, but they don't have the
22 specific details of that. In any event, there is corroboration
23 in Mesbahi's testimony. What happened is that Mesbahi left --
24 because he had become soft on the West, he fell out of favor
25 with the hardliners in Tehran, and he defected to Europe after

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1 finding out that he was slated to be killed. He was informed
2 of that by his friend, Saeed Emami, who was the head of the
3 MOIS and who was himself eliminated subsequently.

4 Mesbahi then took up residence in Germany, but before
5 he left, he still made sure he had in place his communication
6 methodologies with his own trusted colleagues inside the
7 regime, and that included a code system for communications,
8 which leads us to July 23, 2001, when Mesbahi received a coded
9 message from one of his trusted friends inside the Iranian
10 government, which was three words "Shaitan dar Atash." And
11 Mesbahi, when he received the coded message, he knew exactly
12 what it meant, that "Shaitan dar Atash" plan for asymmetrical
13 warfare with the United States was being activated in some
14 fashion, and he knew this was serious, and he immediately
15 informed his handlers in the German police, met with them, told
16 them that some big event, terrorist operation, was about to
17 happen, and probably in America, and he asked the officers to
18 convey this information to the American authorities. He does
19 not know what happened after that, whether it was ever
20 conveyed.

21 Three weeks later, on August 13, 2001, Mesbahi
22 received another coded message from Iran, clarifying the
23 "Shaitan dar Atash," that the aspect of the contingency plan,
24 the particular plan that was being activated, was, in fact, the
25 plan to crash hijacked civilian airliners into American cities.

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1 The Court will note from the sealed materials how that was
2 conveyed and what the precise message was, but it does seem
3 quite clear that that would have been a plan that was being
4 activated. Mesbahi immediately contacted his German police
5 handlers, told them about the message, pleaded for them to take
6 action, and they responded that they would convey it. They had
7 conveyed the earlier message. They would let them know if they
8 needed anything else.

9 Two more weeks passed, August 27, 2001, and Mesbahi
10 received a third message, coded message, which confirmed the
11 activation of "Shaitan dar Atash" and added that Germany was
12 somehow involved. This also proved quite prophetic as the
13 Mohammad Atta-Ramzi Binalshibh-al Qaeda terrorist cell that was
14 the head of the 9/11 attack was, in fact, based in Hamburg,
15 Germany, as is well documented in the 9/11 Commission Report.

16 Mesbahi saw the attacks on television and then made
17 repeated efforts to continue to convey his information to
18 German and American governmental authorities, even went to the
19 United States Embassy in Berlin, but by that time it was all
20 buttoned up and closed down because of security concerns. He
21 made sure that he was photographed by the cameras, held his
22 card up to one of the cameras and said, call me, I have
23 information. He received one call, which he is unclear about
24 what happened, but nobody ever came to meet with him. He was
25 not sure who that caller was, and he doesn't know more about

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1 what was conveyed. But he related the story in very great
2 detail in his testimony in this case, which shows that the
3 Iranian intelligence community knew, as indicated in the
4 memoranda that we talked about earlier, they knew that an
5 attack was about to happen. And this is also, in general,
6 corroborated by the testimony of Witness Z, who had similar
7 forewarnings and knew about certain parts of the information,
8 which he conveyed to an American Embassy abroad. But his
9 information, it is unclear what the American government, what
10 the CIA did with it. He did meet with CIA officers, as his
11 testimony is quite clear. It is unclear what happened to it.
12 It is clear that the meeting happened, and we don't know how
13 the information was used, if at all.

14 Mesbahi also testified about the fact that Iran had
15 purchased an aircraft flight simulator through a Chinese flight
16 company for MOIS. He learned this, again through messages from
17 his allies inside the Iranian intelligence community. That
18 airline simulator was transported to Iran in 2000 by an IRGC
19 front company, and computer software to program the flight
20 simulator was purchased and obtained. The computer software
21 was to simulate a Boeing 757, 767, or 777 aircraft, and the
22 flight simulator was set up with that software at a very
23 secure, secret facility which Mesbahi names explicitly and
24 discusses in his testimony. It is significant because each of
25 the four airliners highjacked on September 11, 2001, and used

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1 in the attacks, were Boeing 757 or 767 models; and yet, Iran
2 has never owned any Boeing 757, 767 or 777 aircraft ever, due
3 to international sanctions against their sale to Iran.

4 In late September 2001, frustrated about his attempts
5 to get his information about what he knew from the coded
6 message to authorities or at least seeing any action taken --
7 no one had contacted him -- in late September 2001, Mesbahi
8 telephoned Kenneth Timmerman, the prominent investigator
9 journalist, who was an expert witness in our case, told
10 Timmerman about the information he had received and about the
11 flight simulator that I have just discussed. This is
12 significant because it is confirmed by Timmerman in his
13 affidavits, and it shows that Mesbahi's story that he testified
14 in this case in 2008 is exactly the same as the substance of
15 what he told Kenneth Timmerman in September 2001, just two
16 weeks after the attacks.

17 And finally, Mesbahi also related that he learned from
18 his sources inside Iran that at least one of the 9/11
19 hijackers, Majid Moqed, who was a muscle hijacker on Flight 77
20 that hit the North Tower of the World Trade Center, was housed
21 at an IRGC-MOIS safe house in Tehran with which Mesbahi was
22 particularly familiar.

23 To conclude about Mesbahi, Dr. Tefft and Claire Lopez
24 looked at his testimony, all of it -- it is, I think,
25 three days of testimony -- and found his sworn testimony not

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1 only to be credible and that particularly about the contingency
2 planning, which of course as I pointed out the State Department
3 knew about, and as I said, the German prosecutors and Israeli
4 intelligence community also has said that Mesbahi is credible.
5 Further, Lopez and Tefft, in their expert opinions, state that
6 Mesbahi's testimony concerning his communication sources inside
7 Iran via encoded encrypted messages and the method and manner
8 of those communications is credible, and they are both
9 experienced CIA operatives and knowledgeable in these areas.

10 I do want to point out just one other thing about the
11 plot, and that is that the Court may have noticed that
12 Witness Z also gives some testimony about what he understood to
13 be the genesis of the plot, which emanates from Imad Mughniyah
14 himself and his observations about an aircraft disaster in
15 Europe. There is nothing inconsistent about this at all
16 because, if Mughniyah was thinking about the effect of aircraft
17 crashing into buildings shortly after takeoff and the
18 devastating effect it would have, the merest mention of it with
19 his colleagues at MOIS and IRGC and the notion that he was
20 working with bin Laden, that would have immediately triggered a
21 realization and a pulling off of the shelf of the contingency
22 plan from Shaitan dar Atash, and said, well, we already have
23 that plan, look here, help us do it, work with bin Laden. So
24 there is nothing inconsistent about what the two witnesses say
25 about the genesis of the actual plot. I just wanted to mention

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1 that because, at first glance, it would seem inconsistent, but
2 it really is not.

3 Now, I think I mentioned earlier Iran had provided
4 material support to al Qaeda before, during, and after the 9/11
5 plot. I have already discussed the "before" and "during" with
6 regard to the various elements I've discussed already, but
7 after 9/11 --

8 THE COURT: Before we go into that area, why don't we
9 take a lunch break.

10 MR. FLEMING: I won't be much longer, I can assure
11 you.

12 THE COURT: How much longer?

13 MR. FLEMING: I can do this part in ten minutes, five
14 to ten minutes.

15 THE COURT: Okay.

16 MR. FLEMING: In the years immediately after 9/11 Iran
17 provided significant material support to al Qaeda in several
18 ways; most significantly, by providing safe haven to Al Qaeda
19 leaders and operatives and keeping them safe from retaliation
20 by U.S. forces which invaded Afghanistan. This had been opened
21 up earlier in the '90s by Mustafa Hamid's negotiations with
22 Iran, but the fact that this happened, that al Qaeda evacuated
23 its hundreds of al Qaeda members and top leaders and their
24 families to Iran is not a matter of speculation. This is a
25 matter of clear government conclusions and U.S. Treasury

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1 Department designations and releases, as well as public
2 comments made by Secretary of Defense Rumsfeld and President
3 Bush, who noted that Iran was harboring al Qaeda operatives
4 after 9/11, which included Seif al-Adl, who I referred to, as
5 well as members of Zawahiri's family and bin Laden's own
6 immediate family, including his eldest son, Saad bin Laden, and
7 that latter figure actually figures prominently in the
8 testimony of one of the MOIS defector witnesses who saw Saad
9 bin Laden and accompanied him in Iran before 9/11, and in the
10 testimony of another defector witness who provided for him
11 after 9/11, provided for his needs and took an active role in
12 the housing and provisions for dozens of Al Qaeda families.
13 This one particular defector was very involved in helping
14 Al Qaeda operatives and their families in their safe refuge in
15 Iran after 9/11. Again, U.S. Government reports, as well as
16 the defector testimony, are entirely consistent in this regard.

17 And in the years that followed 9/11, those al Qaeda
18 operatives, specifically Saad bin Laden and Seif al-Adl,
19 operated and directed and supervised terrorist attacks in the
20 Middle East, in Saudi Arabia, particularly, from the territory
21 of Iran. This is in any number of exhibits, all from the U.S.
22 Government reports, and there were exhibits from the Treasury
23 Department.

24 And Dr. Clawson, in particular, notes Executive Order
25 13224, issued by the Treasury Department in 2009, makes that

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1 explicit statement, that Saad bin Laden managed terrorist
2 operations from Iran after September 11.

3 So in conclusion, your Honor, the testimony from the
4 defectors is very compelling, very detailed, very explicit
5 about Iran's knowledge and direct support of the 9/11 operation
6 before, during, and after. And I wish I could go into it in
7 more detail, but the Court, I'm sure, has read and perhaps seen
8 those videotapes. They are very compelling testimony about the
9 role of Iran, about the role of Hezbollah and Imad Mughniyah
10 himself in the 9/11 operation. This is consistent with the
11 conclusions of the 9/11 Commission, which basically was unable
12 to finish the task of investigating the Iranian and Hezbollah
13 connection to 9/11. But for our experts, all of them conclude
14 that in one form or another that Iran provided material
15 support. Dr. Daniel Byman concludes, "There is clear and
16 convincing evidence that Iran has provided material support for
17 al Qaeda with regard to travel, safe haven, and training, at
18 the very least. And the support for that conclusion comes from
19 a range of sources, including U.S. Government reports and
20 statements of al Qaeda. These experts, by the way, did not
21 have, except for Lopez and Tefft, and Timmerman, they didn't
22 have access to the defector testimony. But they are completely
23 consistent with the sealed testimony, as well. They have a
24 very strong foundation in all regards. Janice Kephart
25 concludes, "There is clear and convincing evidence that Iran

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1 and Hezbollah provided material support to al Qaeda by actively
2 facilitating the travel of the hijackers into and out of
3 Afghanistan through Iran. And it was specifically for the
4 purpose of carrying out the 9/11 attacks. Dr. Patrick Clawson
5 agrees and points out that U.S. Government sources have issued
6 repeated and detailed descriptions of Iranian material support
7 to al Qaeda before, during, and after the 9/11 attacks, and
8 notes that few, if any, noted terrorism experts would dispute
9 that Iran provides material support to Al Qaeda within the
10 meaning of 18 U.S.C., Section 2339(A)(b)(1). Lopez and Tefft
11 come to the same conclusion, as does Dr. Ronen Bergman and
12 Dietrich Snell. All conclude that Iran provided direct
13 material support and resources to Al Qaeda before and during
14 and after 9/11 attacks.

15 That concludes my presentation, your Honor. Again, I
16 understand that the evidence has been moved in and that we are
17 clear to file some more sealed evidence, sealed affidavits.
18 But those affidavits really don't impact the major evidence
19 that we put forward here today, and we will get that done as
20 soon as possible, but it need not hold up a ruling if the Court
21 is so inclined. As Mr. Foote mentioned and is going to mention
22 again, I think, we're here to hopefully get a liability finding
23 so that we can move on, but I will let Mr. Foote address that.

24 THE COURT: When do you intend to submit those?

25 MR. FLEMING: I will do it as soon as possible. There

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1 is a little bit of a logistical problem, but I can overcome
2 that in just a few days. Because it has to be filed in person
3 sealed, we're here for another proceeding next week, I thought
4 I would deliver it next week. I could do it potentially
5 faster, but I have to jump through some hoops. I can do it, I
6 believe, as fast as a few days.

7 THE COURT: I should anticipate it by when?

8 MR. FLEMING: By the 27th, for sure. Ten days, at the
9 max, but I will try to do it as fast as possible. As I said,
10 it does not impact any of the other evidence, the reliability
11 of it.

12 Thank you.

13 THE COURT: Yes.

14 MR. FOOTE: Thank you, Judge. I will be very brief.

15 First off, as a terrorist state, any material support
16 makes them strictly liable for the events, and we've gone well
17 beyond that standard. So my suggestion for process, Judge, is
18 the additional information that Mr. Fleming wants in the record
19 is just that. It will be part of the record. I don't think
20 you need to have it or rely on it in order to enter an order if
21 you're so inclined. What we would propose to do is to email to
22 you our proposed order and our proposed findings of fact and
23 conclusions of law by tomorrow. And then if the Court again is
24 so inclined, this should be referred to Magistrate Maas for his
25 determination of damages, as was done in the Havlish case.

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1 With that, Judge, we conclude this hearing. Thank
2 you.

3 THE COURT: Similar to the process and the
4 determination with regard to the Havlish case, I've reviewed
5 the evidence that was presented and summarized here today and
6 the voluminous evidence that was submitted in the Havlish case
7 during those proceedings.

8 I am going to make this determination at this point,
9 that there has been an extensive record submitted to this
10 Court; that that extensive record, which includes sealed and
11 unsealed submissions, including fact and expert testimony, as
12 outlined here at this hearing, establishes plaintiffs' claims
13 that credible evidence satisfactory to this Court, pursuant to
14 28 U.S.C, Section 1608(e), and I accept it as uncontroverted
15 evidence. Based on that determination, this Court will issue
16 an order consistent with the plaintiffs' proposed findings of
17 fact and conclusions of law and enter the order of default
18 against the sovereign defendants, including Iran and the other
19 named defendants, entities, and individuals. The evidence in
20 this case supports a finding that's consistent with the
21 findings by this Court in Havlish and consistent with the
22 designation by our government that Iran is a state sponsor of
23 terrorism. The evidence supports a finding that Iran and the
24 sovereign defendants were, indeed, responsible for providing
25 material aid and support for terrorist acts against the United

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1 States, its citizens and interests and others, including the
2 terrorist attacks on 9/11; and that it provided such material
3 aid and support before, during, and after 9/11.

4 This Court will issue a default judgment against all
5 defendants, defaulting defendants, based upon the record that
6 exists before this Court. And I will, consistent with the
7 process that we engaged in in the Havlish case, refer the
8 matter to Magistrate Judge Maas for his review and
9 determination of the recommendation with regard to the
10 appropriate level of damages to be awarded to the plaintiffs
11 based on the finding here and the judgment to be entered
12 against the defendants.

13 You say that I can expect to receive it tomorrow?

14 MR. FOOTE: Yes, Judge.

15 THE COURT: I will be prepared either tomorrow or the
16 next day but clearly before the end of the week. If I have any
17 questions, I will contact the parties. If I think any
18 modification should be made to the order, I will notify you
19 before I sign it. Otherwise, if the order is consistent with
20 the proposal that I have already seen, I will be prepared to
21 enter that order this week. I will speak with Magistrate Judge
22 Maas today about being prepared to schedule a time for
23 submission of damages before Magistrate Judge Maas and any
24 appearances before him that he finds are necessary. Obviously,
25 his process should be significantly expedited by the fact that

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1 he has gone through this process and has at least familiarity
2 and a framework for determination of the appropriate damages
3 depending on the evidence that is submitted. So you can expect
4 that that order will be issued this week, and Magistrate Judge
5 Maas will contact you. You should probably try to figure out
6 what time frame you want for submission of material to
7 Magistrate Judge Maas, if you want to give him a letter
8 directly telling him what he can anticipate, so he can figure
9 out exactly what the process will be.

10 MR. FOOTE: Judge, we are ready for that. If you talk
11 to Judge Maas, we are ready in about two weeks to supply him
12 with that information.

13 THE COURT: I will tell him that. I will ask him to
14 either reach out to you in the next ten days, or if you haven't
15 heard directly from him in the next ten days, you should
16 contact his chambers about how he wants to proceed.

17 MR. FOOTE: Thank you, Judge.

18 THE COURT: You're welcome.

19 (Adjourned)
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